

Access Management

Local Perspective

North Carolina
Department of Transportation



North Carolina Department of Transportation
Traffic Engineering Branch

January, 1987

Policy on Street and Driveway Access to North Carolina Highways



Topics

- Serving Parcels Internally
- Real Estate Law
- Recorded Agreements
- Joint Driveways / Connectivity Between Properties
- Control of Accesss & Right of Way
Disposal Committee



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

Memo To: Gary Faulkner, Congestion Management

From: District Engineer

Subject: Please Review This Major Site Plan



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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Memo To: District Engineer
From: Gary Faulkner, Congestion Management
Subject: **Site Review**


Recommendations

All out parcels or excluded areas should be served internally with no additional access onto abutting roadways. The developer should convey this condition in any lease or sell agreements.

Street and Driveway Access Permit Application

LOCATION OF PROPERTY: County _____ Access to Route No. _____ Exact Distance _____ From the Intersection of Route No. _____ and Route No. _____ Toward _____		N. C. DEPARTMENT OF TRANSPORTATION STREET AND DRIVEWAY ACCESS PERMIT APPLICATION	
PROPERTY WILL BE USED FOR: <input type="checkbox"/> Special Commercial <input type="checkbox"/> Retail Commercial <input type="checkbox"/> Residential/Institution <input type="checkbox"/> Other _____ PROPERTY IS LOCATED IN: <input type="checkbox"/> Suburban <input type="checkbox"/> Urban <input type="checkbox"/> Industrial <input type="checkbox"/> Development District/Zone _____ City/Town/Village _____			
AGREEMENT I, the undersigned property owner, request access and permission to construct driveway(s) or street(s) on public right-of-way at the above location. I agree to construct and maintain driveway(s) or street(s) in accordance with the current "Policy on Street and Driveway Access to North Carolina Highways," as adopted by the North Carolina Department of Transportation. I agree that no sign or object will be placed over or over the public right-of-way. I agree that the driveway(s) or street(s) will be constructed as shown on the sketch on the reverse side of this attached plan(s). I agree that driveway(s) or street(s) as shown in my agreement include any approach lanes, storage lanes or speed change lanes, as deemed necessary. I agree that any future improvements to the roadway require necessary the portion of driveway(s) or street(s) located on public right-of-way will be considered the property of the North Carolina Department of Transportation, and I will not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction. I agree that this permit becomes void if construction of driveway(s) or street(s) is not completed within the time specified by the "Policy on Street and Driveway Access to North Carolina Highways." I agree to pay an installation fee for jobs installed by the Division of Highways or pay a \$500 inspection fee for installation by others. Make checks payable to NCDOT. The inspection fee will be refunded if application is denied. I agree to construct and maintain the driveway(s) or street(s) in safe manner so as not to interfere with or endanger the public travel. I agree to provide during construction proper signs, signal lights, flags and other warning devices for the protection of traffic in accordance with the current "Manual on Uniform Traffic Control Devices for Streets and Highways" and Amendments or Supplement thereto. Information as to the above rules and regulations may be obtained from the Division Engineer. I agree to indemnify and save harmless the North Carolina Department of Transportation from all damages and claims for damage that may arise by reason of this construction. I agree that the North Carolina Department of Transportation will assume no responsibility for any damages that may be caused to such facilities, within the highway right-of-way limits, in carrying out its construction. I agree to provide a Performance Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway System. I agree to notify the District Engineer when the proposed work begins and when it is completed.			
Street Name _____ Size _____ Length _____ Pay _____ Installation _____ Date _____ Inspection _____ Signature _____ Address _____ Phone No. _____	Pay Amount _____ Date _____ Signature _____ Address _____ Phone No. _____	Inspection Amount _____ Date _____ Signature _____ Address _____ Phone No. _____	INSTALLATION BY: () NCDOT () OTHER _____ STREET Name _____ Size _____ Length _____ Pay _____ Installation _____ Date _____ Inspection _____ Signature _____ Address _____ Phone No. _____
PROPERTY OWNER Name _____ Signature _____ Address _____ Phone No. _____		NOTES Name _____ Signature _____ Address _____ Phone No. _____	

NC-661 "NOTES" Submit Four Copies of Application to Local District Engineer, N.C. Department of Transportation. The 661-67-19

APPROVALS			
APPROVAL BY: (Local Government Authority) (when desired) _____			
SIGNATURE _____ TITLE _____ APPLICATION RECEIVED BY DISTRICT ENGINEER _____	SIGNATURE _____ TITLE _____ APPLICATION APPROVED BY DISTRICT ENGINEER _____	SIGNATURE _____ TITLE _____ APPLICATION APPROVED BY DISTRICT ENGINEER _____	SIGNATURE _____ TITLE _____ APPLICATION APPROVED BY DISTRICT ENGINEER _____
COMMENTS: _____			
SHOW: 1. LOCATION OF DRIVEWAYS 2. DETAILS OF WORK, INCLUDING PIPES 3. EXISTING BUILDING, WALL, ETC. 4. PROPOSED BUILDING, WALL, ETC. 5. HIGHWAY FEATURES			
PROPOSED PLANS DRAW OR SKETCH BELOW, OR ATTACH CONSTRUCTION PLANS FOR STREETS OR DRIVEWAYS.			
 INDICATE NORTH			
<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #f0f0f0;"></div>			

Driveway Special Provisions

Permit Number 53-82490

Recommendations

All out parcels or excluded areas should be served internally with no additional access onto abutting roadways. The developer should convey this condition in any lease or sell agreements.

Question:

Have we accomplished what we
intended?

Before we answer that question

let's review Real Estate Law.

What occurs when you buy your house?

- You employ a Real Estate Agent
- You get survey's, etc.
- An Attorney prepares a Deed.

What does the Attorney do
immediately upon Closing?

What does the Attorney do immediately upon Closing?

- He races to the Register of Deeds office to record the Deed
- Why?

North Carolina Law

- GS 22-2 Statute of Frauds
- GS 47-18 The Conner Act
- Chain of Title

Chain of Title

The succession of conveyances of a parcel of land commencing with the original patent from the government or some other original grant and continuing up to the present day owner of the property.

GS 22-2 Statute of Frauds

- Originally apart English Common Law
- Requires contracts to sell or convey any interest in real property to be in writing and signed by the party to the contract.

GS 47-18 - The Conner Act

No (i) conveyance of land; or (ii) contract to convey; or (iii) option to convey; or (iv) lease of land for more than three years shall be valid to pass any property interest for a valuable consideration but from the time of registration in the county where the land lies.

The Conner Act

- The crux of the Conner Act is that, if a grantee fails to record (or delays recording) a conveyance, it will be considered absolutely void with respect to the purchasers for value from or lien creditors of the same grantor who record their conveyance or docket their liens prior to recordation by the first grantee.
- NC is categorized as a “Pure Race State”

Bottom Line

All conveyances in Real Estate must be in writing and recorded in the Register of Deeds office to “run with the chain of title”

Let's ask the question again

Does a properly executed driveway permit accomplish what we intended - to insure all outparcels are served internally?

Answer: Maybe

Maybe - Yes

It is an agreement or contract in writing so it is binding on the original parties.

Maybe - No

Most driveway permits are not recorded at the Register of Deeds so they do not run with the chain of title. If legally challenged, an unrecorded driveway permit will not bind the future owner in the chain of title from reversing the condition that “all outparcels be served internally.”

- The North Carolina Register of Deeds offices use the GRANTOR and GRANTEE system.
- This system indexes recorded documents, deeds and plats, in the names of persons who have dealt with the land.

US 15 /501 NC 211
in
Aberdeen and Southern Pines

















RECORDING
NORTH CAROLINA
MOORE COUNTY
TAX LOT NO. _____

APR 4 2 45 PM '94

THIS FEB SIMPLER DEED, made and acknowledged this the 23rd day of March 1994, by and between MAL-MART, INC. and MRS. JUDITH M. ADAMS

hereinafter referred to as the GRANTORS, and the Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the DEPARTMENT;

WITNESSETH:

That the GRANTORS, for themselves, their heirs, successors, and assigns, for and in consideration of the sum of \$ 1.00 agreed to be paid by the DEPARTMENT TO THE GRANTORS, do hereby give, grant and convey unto the DEPARTMENT, its successors and assigns, in FEB SIMPLER (subject to any provisions relating to shuttles' rights of access which may be hereinafter stated) the right of way located in Wendell Township, Moore County, North Carolina, which is particularly described as follows:

Beginning at the undersigned's northeastern property corner in the western existing right of way boundary of U.S. Highway 15-501; thence S 20° 17' 30" E 473.92 feet along and with the undersigned's eastern property line and the western existing right of way boundary of U.S. Highway 15-501 to a point; thence S 69° 42' 44" W 180.0 feet to a point; thence S 20° 17' 30" E 90.0 feet to a point; thence N 63° 42' 44" E 180.0 feet to the point of intersection with the undersigned's eastern property line and the western existing right of way boundary of U.S. Highway 15-501; thence S 20° 17' 30" E 23.18 feet to the undersigned's southeastern property corner in the western existing right of way boundary of U.S. Highway 15-501 and being the point of ending of this controlled access right of way description.

The property hereinabove described was acquired by the GRANTORS by instrument(s) recorded in the Moore County Registry in Deed Book 304 Page 800 231

TO HAVE AND TO HOLD the aforesaid right of way and all privileges and appurtenances thereto belonging to the DEPARTMENT in FEB SIMPLER.

This deed is subject to the following provisions only:

It is further understood and agreed that the Grantors will not erect or place any fencing, barriers, light poles, signs or landscape items/plants upon the highway right of way described herein without the prior and written approval of the North Carolina Division of Highways.

IT IS UNDERSTOOD AND AGREED between the parties hereto that this conveyance is made for the purpose of constructing and establishing upon the right of way hereby conveyed a road or highway designated as State Highway Project 5.561012 Moore County which road or highway is a controlled access facility as defined by law and the GRANTORS shall have no right of access to said road or highway, except such access as may be provided by way of local service or frontage roads and streets or specific access points as shown and designated as such on the right of way plans for said State Highway Project on file in the office of the DEPARTMENT in Raleigh, North Carolina.

WITNESSETH
Page 1
December 1993

Drawn by R. J. White Checked by W. J. Johnson

BOOK PAGE
00992 00096

PROJECT 5.561012 PARCEL 42.A

The access as provided is more particularly described as follows:

Access is provided by means of a specific access point ninety (90) feet in width which is located along the western right of way boundary of the highway right of way described herein; said access runs along and with a line described as being S 20° 17' 30" E 90.0 feet between two points in the above described right of way description.

As to such local service or frontage roads and streets or specific points of access, the GRANTORS reserve unto themselves, their heirs, successors, executors and assigns for the benefit of their remaining property shuttles' right of access thereto as at common law; subject, however, to the right of the DEPARTMENT to reasonably regulate said shuttles' rights of access in order to protect and safeguard the traveling public.

The GRANTORS by the execution of this instrument, acknowledge that the plans for the aforesaid project as they affect their property have been fully explained to them or their authorized representative.

And the GRANTORS covenant with the DEPARTMENT, that the GRANTORS are seized of the premises in fee simple, have the right to convey the same in fee simple, that the title thereto is marketable and free of all encumbrances, and that the GRANTORS will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is hereby conveyed subject to the following exceptions: NONE

IN WITNESS WHEREOF, the GRANTORS have hereunto set their hands and seals for it corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by Authority of its Board of Directors; the day and year first above written.

MAL-MART, INC. (Corporate Seal)
By: APC Vice President or President
Attest: Sharon L. Stevens ASST. SECRETARY or SECRETARY
(Corporate Seal)

NOTED FOR DEPARTMENT OF TRANSPORTATION
STATE NC COUNTY Moore BY: ASD MAR 31 1994

I, a Notary Public of the County and State aforesaid, certify that GRANTORS, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 23rd day of March, 1994.

My Commission expires: 4-11-96 Notary Public

STATE NC COUNTY Moore

I, a Notary Public of the County and State aforesaid certify that Sharon L. Stevens personally came before me this day and acknowledged that she is Assistant Secretary of Mal-Mart, Inc. a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Sharon L. Stevens as its Assistant Secretary. Witness my hand and official stamp or seal, this the 23rd day of March, 1994.

My Commission expires: 4-11-96 Notary Public
North Carolina—Moore County
The foregoing Certificate(s) of Kathleen A. Mattison, Notary Public

is/are certified to be correct. This instrument and this certificate are duly recorded on the 11th day of April, 1994, in Book 304, Page 800 231 at 2 o'clock P.
Judith M. Adams REGISTER OF DEEDS FOR Moore COUNTY
BY: Judith M. Adams Deputy Assistant - Register of Deeds

WITNESSETH
Page 2
December 1993









STATE OF NORTH CAROLINA
COUNTY OF MOORE

MRS. JUDY D. MARTIN
REGISTER OF DEEDS - MOORE COUNTY
CARRHAGE, NORTH CAROLINA 28527

200 JAN 31 P 2-38 MEMORANDUM
OF AGREEMENT

R & T Properties of North Carolina, LLC, referred to as "R&T", and North Carolina Department of Transportation, referred to as "DOT", have agreed as follows:

1. R&T owns a tract of land on U.S. 15-501 in Southern Pines, which is described in Book 1568, at Page 335. R&T plans a commercial development on the property.
2. DOT had previously granted a driveway permit to R&T for two driveways from US 15-501 to the property. A copy of the approximate location of the driveways is shown on attached Exhibit A.
3. The property owners of a tract adjoining R&T's property now plan to build a boulevard (Henley Boulevard Extension) which would intersect with US 15-501 just north of R&T property.
4. R&T and DOT have agreed to move its northern driveway southwardly to the approximate location shown on Exhibit B to better facilitate traffic flow at the new Henley Boulevard Extension and US 15-501 intersection.
5. R&T agrees to permit DOT and/or its assigns to convert its northern driveway to a right in/right out provided that:

- a. DOT or its assigns builds and completes Henley Boulevard Extension in accordance with the permit issued by DOT & Construction of the right in/right out driveway for R&T may begin at the same time as but not before the construction of the Henley Boulevard Extension. Construction of the right in/right out driveway and the Henley Boulevard Extension shall be done on a timely basis and the right in/right out driveway will be completed in an expeditious manner so as not to disrupt the traffic flow to and from R&T's northern driveway.
- b. Before a permit is issued by DOT for the Henley Boulevard Extension, R&T is to be granted a permanent easement for direct ingress and egress for two way vehicular traffic to the east and west bound lanes of Henley Boulevard Extension which easement R&T may use for the benefit of its property. The permanent easement for ingress and egress shall be within 350 feet of the eastern right of way of US 15-501.
- c. The intersection of Henley Boulevard Extension and US 15-501 will be designed to accommodate a stop light which DOT or its assigns will install if now or in the future DOT deems such stoplight necessary for traffic control.

It is understood that if Henley Boulevard Extension is not completed or the easement is not granted to R&T as set forth above, then R&T's northern driveway will revert back to the original location in accordance with the permit granted by DOT to R&T.

6. R&T will permit DOT and/or its assigns to extend the deceleration lane between R&T's southern and northern driveway.
7. R&T's southern driveway will continue to have ingress and egress to the north and south bound lanes of US 15-501.

Dated: 12-21-00

no 9/16

WIT: Tom Mincher, Jr. Notary
1400 Bethlehem Ave #190
Carrhage, NC 28527

R&T Properties of North Carolina, LLC

BY: TKM Investments Limited Partnership,
Member
BY: TDM Investment Corporation, General
Partner

By: [Signature]
President

Attest:

[Signature]
Assistant Secretary Thomas D. Mincher, Jr.

(Corporate Seal)

N.C. Department of Transportation

BY: [Signature]

NORTH CAROLINA
MOORE COUNTY
Gavel

See Page 3

I, Jennifer N. Clapp, a Notary Public of the County and state aforesaid, certify that Thomas D. Mincher, Jr. personally appeared before me this day and acknowledged that she is ~~Assistant~~ Secretary of TDM Investments Limited Partnership, a North Carolina limited partnership, member of R&T Properties of North Carolina, LLC, a North Carolina limited liability company; and that by authority duly given and as the act of the corporation; the foregoing instrument was signed in its name by its ~~vice~~ president, sealed with its corporate seal and attested by her as its ~~Assistant~~ Secretary for and on behalf of, and as the act and deed of, said company.

Witness my hand and official stamp or seal, this 28th day of December, 2000.

[Signature]
Notary Public

My commission expires: 11-17-01

NORTH CAROLINA
MOORE COUNTY

I, Barbara M. Gyle, a Notary Public of the County and state aforesaid, certify that Lon A. Sanderson, a Highway Administrator of the North Carolina Department of Transportation personally appeared before me this 28th day of December, 2000.

[Signature]
Notary Public

My commission expires: 4-29-03

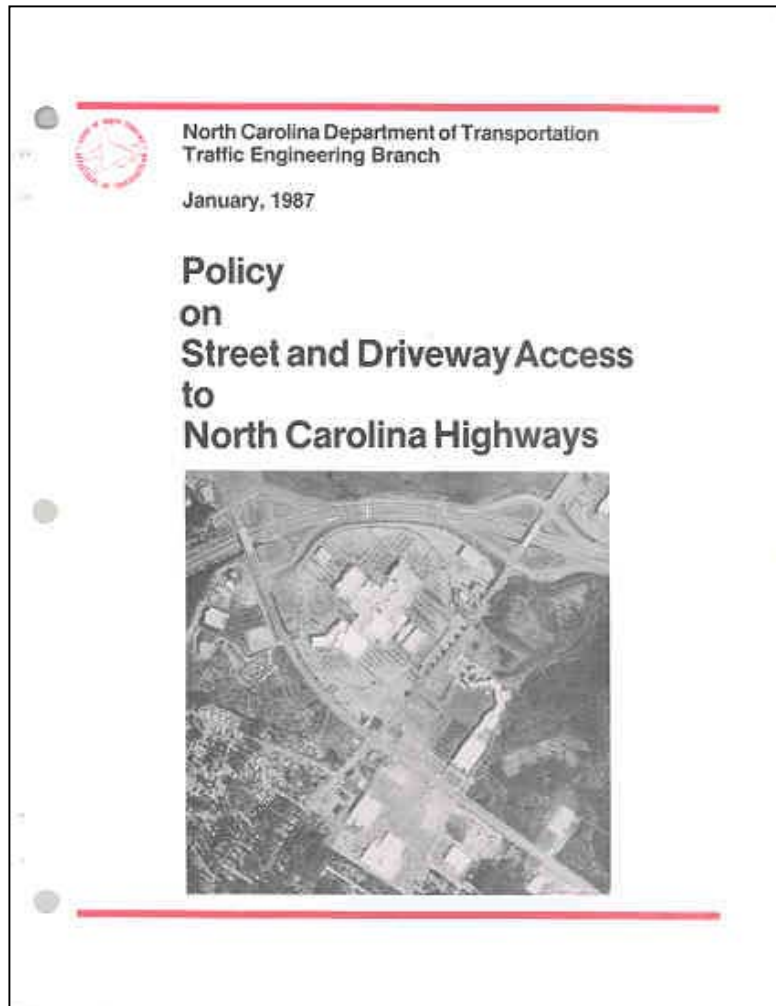








Joint Driveways



Number and Arrangement of Driveways:

Adjacent property owners may, by written mutual agreement, construct a joint driveway to serve both properties....

Cross Access Agreements

- What the NCDOT Driveway manual refers to as a “written mutual agreement,” developers refer to as “Cross Access Agreements”
- Cross Access Agreements should be recorded at the Register of Deeds office by the property owners
- Copies of the recorded Cross Access Agreement should be provided to the District Engineer prior to issuing a “Joint Driveway Permit”

Recorded 5-31-00 @ 3:20 PM
Bk. 704, Pg. 164
Lee Co. Reg.

This instrument drafted by: W. Woods Dotson, Attorney at Law
After recording, mail to: Samuel J. Wernon, III, P.O. Box 1248, Sanford, NC 27330

NORTH CAROLINA)
LEE COUNTY) DEED OF EASEMENT FOR JOINT DRIVEWAY

This deed, made this 31 day of May, 2000, by and between

FUEL MATE, LLC, a North Carolina Limited Liability Company, organized under the laws of the State of North Carolina with its principal place of business located at 40 Laurel Road, Pinehurst, Moore County, North Carolina 28374 (hereinafter referred to as "Fuelmate"); and

AGA CORPORATION, a corporation organized under the laws of the State of North Carolina with its principal place of business located at P.O. Box 2825, Sanford, Lee County, North Carolina (hereinafter referred to as "AGA").

WITNESSETH:

That whereas, the said Fuelmate is the owner of a certain lot of land on the west side of N. C. Highway 87 running back to Harvey Faulk Road near the City of Sanford, the same being the land conveyed to them by Bryan + Strickland by deed recorded in Book 704, Page 156, in the office of the Register of Deeds of Lee County; and whereas, said AGA is the owner of a certain parcel of 3.4 acres immediately to the South of and adjoining the above-referenced land of Fuelmate, the same being a portion of the land conveyed to them by _____ by deed recorded in Book _____ on Page _____ in the office of the Register of Deeds of Lee County; and whereas, all of said parties agree that it would be for their mutual interest to establish a joint driveway for the common use of the two lots of land above referred to;

Now, therefore, it is mutually agreed that a joint driveway be established for the common use of the two lots bordering thereon and located as follows:

BEGINNING at a point, which point is located in the westerly margin of the 150' right of way of N. C. Highway 87; and which point is marked by a found iron pipe, and which point is the intersection of the southeast corner of the aforementioned Fuel Mate lot with the northeast corner of the aforementioned 3.4 acre AGA tract; and running thence south 81 degrees 44 minutes 11 seconds west 56.81 feet to a found iron pipe, and extending in a generally northerly and southerly direction for a distance of approximately 25 feet, so that the said driveway is approximately 50 feet in width and roughly half on each parcel.

And in consideration of the mutual rights and advantages above set out, each of said parties hereby gives, grants, and conveys unto the other party the perpetual right and easement of egress, ingress, and regress over and upon said driveway as above described.

To have and to hold the rights and easements hereby granted to the respective Grantees and their successors in title forever, it being agreed that the rights and easement hereby granted are for the common use of, are appurtenant to and run with the two parcels of land bordering thereon and above referred to;

In Testimony Whereof, said parties have hereunto set their hands and seals the day and year first above written.

FUEL MATE, LLC., a North Carolina Limited Liability Company

By: Ernest B. Howard (Seal)
Manager

AGA CORPORATION:

ATTEST:

By: Van R. Jones
Secretary

By: John H. Allen
Vice President

Right of Way Disposal and Control of Access Committee

The Right of Way Disposal and Control of Access Committee acts on recommendations from the Division Engineer for right of way disposals, control of access changes or reductions, and requests to break control of access on the State Highway System.

Committee Members:

- Chairman: Highway Design Branch Manager
- Voting Members:
 - Right of Way (1)
 - Design Services Unit (1)
 - Project Development & Env. Analysis Branch (1)
 - Traffic Engineering Branch (1)
- Non-Voting Member - Federal Highway Administration

Procedures for Changes in Control of Access

- Requests originate with District Engineer
- District Engineer investigates and forwards recommendations to Division Engineer
- Division engineer forwards recommendation to the Committee
- Committee reviews
- Committee advises Division Engineer of its recommendations
- Division Engineer advises the Applicant of approval or denial of the request

Right of Way Disposal and Control of Access Committee

Policy Statement

Control of Access is the single most important factor affecting the safety and operation of Highways

Advantages of Recorded Deeds and Plats for Control of Access

- Meets the legal requirements for public notice
- Will run with the chain of title
- Does not rely on the property owner or the assigns in the chain of title to convey any conditions in future lease or sell agreements
- Will not get misplaced in the office or thrown out when the office files are purged